

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Inessa Abayev	Team: Team # 1	CCRB Case #: 201000961	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/14/2010 2:00 PM	Location of Incident: § 87(2)(b) and § 87(2)(b) and the 75th Precinct stationhouse	Precinct: 75	18 Mo. SOL 7/14/2011	EO SOL 7/14/2011	
Date/Time CV Reported Fri, 01/22/2010 12:45 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 01/22/2010 10:24 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christophr Esposito	14205	934833	075 PCT
2. SGT Joseph Seminara	02815	935723	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Joseph Seminara	Abuse: At § 87(2)(b) and § 87(2)(b) in Brooklyn, Sgt. Joseph Seminara threatened § 87(2)(b) with the use of force.	
B.POM Christophr Esposito	Abuse: At the 75th Precinct stationhouse, PO Christopher Esposito searched § 87(2)(b)'s cell phone.	

## Case Summary

§ 87(2)(b) filed this complaint on the Civilian Complaint Review Board's website on behalf of her son, § 87(2)(b) on January 22, 2010 (encl. 5a-5b).

At about 1 p.m. on January 14, 2010, § 87(2)(b) was walking to the library when an unmarked car pulled up next to him at § 87(2)(b) and § 87(2)(b) in Brooklyn. PO Christopher Esposito and Sergeant Joseph Seminara of the 75<sup>th</sup> Precinct approached § 87(2)(b) and placed him under juvenile arrest. The following is alleged from their interaction:

- **Allegation A- Abuse of Authority:** At § 87(2)(b) and § 87(2)(b) in Brooklyn, Sgt. Joseph Seminara threatened § 87(2)(b) with the use of force. § 87(2)(g)

- **Allegation B- Abuse of Authority:** At the 75<sup>th</sup> Precinct stationhouse, PO Christopher Esposito searched § 87(2)(b)'s cell phone. § 87(2)(g)

## Results of Investigation

### Civilian Statements

#### Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) black male with black hair and brown eyes. He is 5'3" tall and weighs 200 pounds.
- § 87(2)(b) provided a phone statement on February 4, 2010 (encl. 7) and was interviewed at the CCRB on February 17, 2010 (encl. 8a-8e). § 87(2)(g)

At about 1 p.m. on January 14, 2010, § 87(2)(b) was walking from his house on § 87(2)(b) and § 87(2)(b) to the library on § 87(2)(b) and § 87(2)(b). He saw an unmarked white car pull up behind him. Two officers dressed in plainclothes announced themselves as "police" and approached him. The investigation identified the officers as PO Christopher Esposito and Sgt. Joseph Seminara of the 75<sup>th</sup> Precinct. PO Esposito was described as a muscular white male with black hair, 5'7" tall and in his 30s. Sgt. Seminara was described as a thin white male with blonde or brown hair, 5'4" tall and in his 30s as well.

PO Esposito asked § 87(2)(b) how old he was and if he was supposed to be in school. He replied that he was § 87(2)(b) and was home-schooled. PO Esposito responded, "You're lying." PO Esposito also accused § 87(2)(b) of the robbery in the area, which § 87(2)(b) denied. The officers requested to see his ID, however § 87(2)(b) did not have any ID with him. PO Esposito asked if § 87(2)(b) had anything on him that he shouldn't, to which he said that he did not. The officers then stated that they would have to search him.

PO Esposito searched the pockets of § 87(2)(b) hoodie, coat and pants. He found a toy gun in § 87(2)(b) coat pocket. The plastic toy gun was silver with an orange tip and was five or six inches long. § 87(2)(b) forgot that he had the toy gun on him. He had not taken it out of his pocket at any point as he walked to the library, and it was not sticking out. Sgt. Seminara remarked that if § 87(2)(b) tried to run, he would “split [his] head open.” PO Esposito found other items in § 87(2)(b) various pockets, including his cell phone. (In a follow-up phone statement, § 87(2)(b) § 87(2)(b) alleged that the officers first accessed his cell phone to obtain his mother’s phone number, but were unable to find it. They again accessed his cell phone in the stationhouse, at which point they found an image of interest.)

The officers placed § 87(2)(b) in handcuffs and sat him into the vehicle. The officers then transported him to the 75<sup>th</sup> Precinct stationhouse. § 87(2)(b) was led into a small room where one of the officers un-cuffed his left arm and told him to handcuff his right arm to a rail by a bench. The officers again asked about his real name and age. Then, when the officers were outside of the room where he was sitting, § 87(2)(b) heard the officers search his phone but did not recall what phrases the officers used or why he specifically thought so. PO Esposito came inside of the room holding the cell phone. PO Esposito accessed some of his cell phone wallpapers, at least one of which depicted images of guns. The image of the guns was not § 87(2)(b) main screensaver- the officers had to search through the phone to find those images. PO Esposito asked if § 87(2)(b) had any pictures that he was not supposed to have, and the officers asked, “What are those?” while referring to the image. PO Esposito asked if § 87(2)(b) “had those” in his house, and stated that if he didn’t, he must know people who do.

Sgt. Seminara and another officer, PO3, were present in the room as well. PO3 was a bald white male dressed in plainclothes, and appeared to also be in his 30s, or older. PO3 told § 87(2)(b) that he was PO Esposito’s and Sgt. Seminara’s “boss.” § 87(2)(b) stated that they were not his, and they were just pictures. The officers did not ask to search his cell phone, and § 87(2)(b) did not give them permission in to search his cell phone and did not offer to show the images of the guns to the officers. § 87(2)(b) asked if he needed a lawyer present when he was questioned. Sgt. Seminara asked why, to which § 87(2)(b) responded that it was his right. Sgt. Seminara said, “You don’t have any rights because you’re § 87(2)(b).” The officers also asked if they would find a gun if they searched his home. Additionally, they told § 87(2)(b) that they were trying to obtain a warrant for his house, but later said they were too tired or that it was a waste of time. § 87(2)(b) was released four hours later to his mother’s cousin.

**Complainant:** § 87(2)(b)

§ 87(2)(b) provided a phone statement on January 29, 2010 (encl. 6) in which she recounted the details of the incident that her son relayed to her § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

## **NYPD Statements:**

### **Subject Officer: PO CHRISTOPHER ESPOSITO**

- *PO Christopher Esposito is a § 87(2)(b) -old white male with black hair and blue eyes. He is 5'10" tall and weighs 240 pounds.*
- *On January 14, 2010, PO Esposito was assigned to Anti-Crime with Sgt. Seminara, and worked from 7:05 a.m. to 3:40 p.m. He was dressed in plainclothes. PO Esposito was assigned to unmarked vehicle number § 87(2)(b) which is a grey Impala.*

### **Memobook**

PO Esposito had the following memobook entries relating to this incident (encl. 10a-10b):

"1400: one male stopped at § 87(2)(b). 1401: 1 under [arrest]. 1445: 84 at [station]house. 1805: Release Juvenile to cousin"

### **CCRB Testimony**

PO Esposito was interviewed at the CCRB on May 19, 2010 (encl. 11a-11c).

At about 2 p.m. on January 14, 2010, PO Esposito and Sgt. Seminara were driving eastbound on § 87(2)(b) in a robbery-prone area. PO Esposito was the recorder and Sgt. Seminara was the operator of the vehicle. PO Esposito observed a male, § 87(2)(b) walking down § 87(2)(b) § 87(2)(b) was wearing a bandana on his face. PO Esposito noticed the butt or handle of a brown gun sticking out of § 87(2)(b) jacket pocket from about ten feet away. PO Esposito and Sgt. Seminara stepped out of the car and stopped § 87(2)(b) PO Esposito did not know whose decision it was to stop § 87(2)(b) because it happened quickly.

PO Esposito approached § 87(2)(b) and stated, "Just keep your hands out of your pocket." § 87(2)(b) complied with the order. PO Esposito frisked § 87(2)(b) and took out the gun from his jacket pocket. PO Esposito did not recall if he first frisked § 87(2)(b) or took out the gun. The front part of the gun was wrapped in a bandana, making it look like a revolver. PO Esposito took the bandana off and determined that it was a toy gun because it had an orange tip.

PO Esposito then searched § 87(2)(b) remaining pockets in his jacket and pants; PO Esposito also recovered § 87(2)(b) cell phone from the search. At some point, the officers asked § 87(2)(b) for his age. He replied that he was either § 87(2)(b) or § 87(2)(b) PO Esposito asked why § 87(2)(b) was not in school. He said that he was home-schooled. PO Esposito then asked about the whereabouts of § 87(2)(b) mother. He stated she was not home. The officers then asked where § 87(2)(b) was going. He responded that he was going to the library. PO Esposito then placed § 87(2)(b) under arrest for § 87(2)(a) Fam. Ct. Act § 381.3 and placed him in the vehicle. § 87(2)(b) did not attempt to flee or run from the officers while during this interaction. Sgt. Seminara did not tell § 87(2)(b) that he would "crack" or "split" his head open if he tried to run. Neither officer threatened § 87(2)(b) with the use of force at any point.

When they arrived at the 75<sup>th</sup> Precinct stationhouse, Sgt. Seminara brought § 87(2)(b) to the front desk and then escorted § 87(2)(b) upstairs to the juvenile room. PO Esposito supervised § 87(2)(b) in the room while doing his paperwork. PO Esposito retrieved § 87(2)(b) mother's phone number from § 87(2)(b) cell phone. He did not recall if he gave § 87(2)(b) the cell

phone to look up his mother's phone number, or if § 87(2)(b) told him how to search for his mother's phone number. PO Esposito only accessed the cell phone in § 87(2)(b) presence and had § 87(2)(b) permission to do so. Afterward, PO Esposito secured the cell phone by keeping it in one of his pockets. In the juvenile room, PO Esposito asked § 87(2)(b) why he had the toy gun. § 87(2)(b) replied that he had a "fascination with guns." § 87(2)(b) then voluntarily stated that he had photographs of guns on his cell phone. § 87(2)(b) told PO Esposito how to pull up the photographs on his cell phone. One photograph showed four guns on what appeared to be a bed. Sgt. Seminara was the only other officer present in the juvenile room with them during this time.

PO Esposito learned the following from Sgt. Seminara later: Sgt. Seminara called § 87(2)(b) to inform her about her son. He asked if they had any guns at home, to which she replied "no." She told Sgt. Seminara that her son had a "fascination with guns." § 87(2)(b) was later released to a relative at the stationhouse.

**Subject Officer: SERGEANT JOSEPH SEMINARA**

- *Sgt. Joseph Seminara is a § 87(2)(b)-old white male with brown hair and green eyes. He is 5'7" tall and weighs 150 pounds.*
- *On January 14, 2010, Sgt. Seminara worked from 9:26 a.m. to 6:10 p.m. as the Anti-Crime Sergeant with PO Esposito. He was dressed in plainclothes and was assigned to an unmarked car #883, which is a silver Chevy Impala.*

**Memobook**

Sgt. Seminara had the following memobook entries relating to this incident (encl. 12a-12b):  
"1356: One stopped § 87(2)(b) in § 87(2)(a) Fam. Ct. Act § 381.3. States 'I am home schooled.' Removed to PCT to contact guardian."  
"1805: Released Juvenile to cousin designated by mother. § 87(2)(b), § 87(2)(f)

**CCRB Testimony**

Sgt. Seminara was interviewed at the CCRB on May 25, 2010 (encl. 13a-13b). § 87(2)(g)

Sgt. Seminara noticed the butt of a gun sticking out of § 87(2)(b)'s right jacket pocket. By the time he approached, PO Esposito had recovered a firearm that was wrapped in a bandana from § 87(2)(b). PO Esposito handed the firearm to Sgt. Seminara and handcuffed § 87(2)(b). Sgt. Seminara determined that it was an imitation firearm because of its weight and his training. Sgt. Seminara took the bandana off of § 87(2)(b) face, and saw that he looked young.

§ 87(2)(b) was transported to the stationhouse, where PO Esposito searched him before the desk sergeant. This was the first time that Sgt. Seminara recalled seeing § 87(2)(b) cell phone. Sgt. Seminara did not remain in the juvenile room the entire time. At one point, Sgt. Seminara left to inform the detective squad of the arrest because of recent robberies in the area, however the detectives were busy with a homicide, and could not look into the matter.

While retrieving his mother's phone number, § 87(2)(b) said, "Look, I just have a thing with guns," and held out his cell phone to show the officers a photograph of four real guns on a green tablecloth. § 87(2)(b) told Sgt. Seminara that she did not know what else to do, and that her son was "obsessed" with guns.

### **Officers Not Interviewed**

§ 87(2)(g) . PO3 was said to have identified himself as PO Esposito's and Sgt. Seminara's "boss" and was dressed in plainclothes. Roll Call shows that there were two Captains, one Inspector, six Lieutenants and sixteen Sergeants working during that same tour. PO Esposito and Sgt. Seminara stated that they were the only other officers in the juvenile room with § 87(2)(b)

§ 87(2)(b) § 87(2)(g)

### **NYPD Documents**

#### **Command Log**

The 75<sup>th</sup> Precinct Command Log for January 14, 2010 (encl.16) notes PO Esposito's arrest of § 87(2)(b) at 2:06 p.m.

#### **Juvenile Report**

§ 87(2)(b) and § 87(2)(b) signed an unsealing order to release § 87(2)(b) juvenile report to the CCRB for the purpose of this investigation. § 87(2)(a) Fam. Ct. Act § 381.3

### **Arrest for Incident and Disposition**

- § 87(2)(a) Fam. Ct. Act § 381.3

### **Status of Civil Proceedings**

- § 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b) . An amended Notice of Claim was filed on § 87(2)(b) (encl. 91-9b) by § 87(2)(b) and his mother, § 87(2)(b) claiming false arrest and imprisonment, malicious prosecution, assault and battery, humiliation, menacing and violation of civil rights. The Claim stated that the full nature and extent of § 87(2)(b) injuries are still unknown. They are seeking one million dollars as redress.

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian's CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) (encl. 3a-3b).

### **Subject Officers CCRB History**

- PO Christopher Esposito has been a member of the service for five years and there are four substantiated CCRB allegations against him, all of which stem from CCRB case number 200807987 (encl. 2a-2b). The allegations include an unlawful stop, frisk, search and name and shield refusal. Charges were brought against PO Esposito by the NYPD regarding those substantiated allegations.
- Sgt. Joseph Seminara has been a member of the service for five years and there are no substantiated CCRB allegations against him. (encl. 2c).

### **Conclusion**

#### **Identification of Subject Officers**

§ 87(2)(b) attributed the verbal threat of force to the officer he described as a thin white male with blonde or brown hair, about 5'4" tall, and in his 30s. § 87(2)(g)

§ 87(2)(b) stated that the officer who searched his cell phone and questioned him about guns was a muscular white male with black hair, about 5'7" tall, appeared to be in his 30s. § 87(2)(g)

§ 87(2)(b). PO Esposito confirmed that he was in possession of his cell phone following the search. § 87(2)(g)

### **Investigative Findings and Recommendations**

#### **Allegations Not Pleaded**

§ 87(2)(g)

**Allegation A- Abuse of Authority: At § 87(2)(b) and § 87(2)(b) in Brooklyn, Sgt. Joseph Seminara threatened § 87(2)(b) with the use of force.**

In both § 87(2)(b) phone statement and official statement, he alleged that Sgt. Seminara told him he would "split [his] head open" if he attempted to run after he was stopped. Sgt. Seminara denied making such a statement or threatening § 87(2)(b) with any use of force. PO Esposito corroborated that Sgt. Seminara did not make the statement or threaten § 87(2)(b) with the use of force. § 87(2)(g)

**Allegation B- Abuse of Authority: At the 75th Precinct stationhouse, PO Christopher Esposito searched § 87(2)(b) s cell phone.**

In his official statement, § 87(2)(b) stated that PO Esposito confiscated his cell phone after he was stopped and placed under arrest. Allegedly, PO Esposito searched and accessed images on § 87(2)(b) cell phone inside of the stationhouse, and questioned him about the images. § 87(2)(b) inquired if he should have a lawyer present at the time, to which the officer allegedly stated that § 87(2)(b) “has no rights” because of his age.

§ 87(2)(g) . To begin, the officers asked § 87(2)(b) for his mother’s phone number to call her about the arrest. PO Esposito then either gave § 87(2)(b) his cell phone back temporarily to find the phone number, or § 87(2)(b) told PO Esposito how to find it. Sometime soon after, PO Esposito asked § 87(2)(b) why he had the toy gun that was confiscated. § 87(2)(b) allegedly replied that he had a “fascination with guns” and then volunteered to show PO Esposito an image of guns that was saved on his cell phone.

Sgt. Seminara stated that they instructed § 87(2)(b) to locate his mother’s phone number on his cell phone. After finding the number, § 87(2)(b) commented that he had a “thing with guns” and showed the officers an image of guns that was saved on his phone, as though to explain why he was in possession of the imitation firearm earlier.

*Police Patrol Guide Procedure Series §218* (encl. 1d-1e) states the following regarding prisoners’ cell phones: officers “must obtain a search warrant, prisoner’s consent or some exigent circumstances must exist in order to lawfully search for information stored in a cellular phone.” § 87(2)(g)

§ 87(2)(g)

Team:   1  

Investigator:	_____	Inessa Abayev	July 14, 2010
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date